

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the reasons which follow.

I. Objections Under 37 C.F.R. § 1.163(a) and Rejections Under 35 U.S.C. 112

The Examiner objects to the disclosure under 37 CFR § 1.163(a) and rejects the claim under 35 U.S.C. 112, first and second paragraphs, as being unsupported by a clear and complete botanical description which distinguishes the cultivar from related known varieties. Favorable reconsideration and allowance of the application is requested in view of the foregoing amendments and the remarks which follow.

In order to expedite the Examiner's review of this response, applicant will address each of the Examiner's objections in the order they were discussed in the Official Action.

A. The specification has been amended at:

- i. page 4, lines 20-22, to provide the RHS color designation of the lower leaf surface of a mature and immature leaf of 'Rialto';
- ii. page 5, lines 1-3, to provide the RHS color designation of the venation color of the lower leaf surface of a mature and immature leaf of 'Rialto';
- iii. page 5, line 6, to provide the RHS color designation of the petiole color of 'Rialto';
- iv. page 6, line 7, to provide the RHS color designation of the peduncle color of 'Rialto';
- v. page 6, line 14, to provide the RHS color designation of the anther color of 'Rialto';
- vi. page 6, line 18, to provide the RHS color designation of the stigma color of 'Rialto';
- vii. the parental varieties of 'Rialto' are unknown. Accordingly, the Applicant was not able to provide a comparison between 'Rialto' and the parental varieties.

viii. page 2, between lines 12 and 13, to insert a comparison between the new cultivar 'Rialto' and the comparison cultivar, 'Simplon'.

B. The specification has been amended at page 1, lines 22-23, bridging to page 2, lines 1-4, to provide the first location of asexual propagation of 'Rialto'.

II. Requirement for Information Under 37 CFR 1.105

In compliance with the requirement for information under 37 CFR 1.105, and in accordance with the duty of disclosure under 37 CFR 1.56, Applicant hereby submits an Information Disclosure Statement and PTO/SB08 with a copy of the following foreign Plant Breeder's Rights grants: 1) CPVO Community Plant Variety Rights, granted May 21, 2001; 2) New Zealand Plant Variety Rights, granted September 2, 2002; 3) Polish Plant Breeder's Right, granted February 11, 2004 (with Translation of Certificate); and 3) South African Plant Breeder's Right, granted March 20, 2003.

The instant plant was neither sold nor made publicly available anywhere in the world more than one year prior to the U.S. provisional application filing date of June 28, 2002. The instant plant's first date and place of sale was in Autumn of 2002 in The Netherlands. Accordingly, there is no basis for rejection of the claim under 35 U.S.C. § 102(b).

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should an improper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Amendment and Reply Under 37 C.F.R. § 1.111
Serial No. 10/607,270

Atty. Dkt. No. 082671-0177

Respectfully submitted,

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